

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.
--

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY DONALD SMITH,

Defendant and Appellant.

B151929

(Super. Ct. No. BA206618)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dale S. Fischer, Judge. Appeal dismissed.

Howard J. Specter, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D. Martynec and Kim Aarons, Deputy Attorneys General, for Plaintiff and Respondent.

Gregory Donald Smith was charged in an information with possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) and was alleged to have suffered three prior serious felony convictions qualifying him for punishment under the “Three Strikes” law (Pen. Code., §§ 667, subds. (b) - (i); 1170.12, subds. (a) - (d)) and to have served two prior prison terms qualifying him for additional sentence enhancements (Pen. Code, § 667.5, subd. (b)). In a negotiated plea, Smith pled guilty to possession of a controlled substance and admitted he had one prior serious felony conviction and had served one prior prison term. Pursuant to the terms of the plea agreement, the trial court sentenced him to a term in state prison of five years (the middle term of two years, doubled pursuant to the Three Strikes law, plus one year for the prior prison enhancement).

Smith filed a timely notice of appeal. His request for a certificate of probable cause pursuant to Penal Code section 1237.5 was denied by the trial court. On appeal, Smith contends that his sentence of five years for possession of a small amount of cocaine constitutes cruel and unusual punishment in violation of both the state and federal Constitutions. The People argue that Smith’s appeal is not operative because he failed to obtain a certificate of probable cause and request dismissal of the appeal. We agree the appeal must be dismissed. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 31(d).)

Smith accepted a plea bargain that included a reduction in the maximum permissible term for conviction of a felony as a third strike offender with two prior prison terms: from a possible term of 27 years to life to the five-year term actually imposed. Smith now challenges on constitutional grounds the sentence to which he had agreed. Such an appeal is in substance an attack on an integral part of the plea itself, requiring a certificate of probable cause. (*People v. Panizzon* (1996) 13 Cal.4th 68, 79 [“a challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the validity of the plea itself”].) Because Smith did not obtain a certificate of probable cause as required by Penal Code section 1237.5, this court cannot consider his constitutional claim. (*People v. Cole* (2001) 88 Cal.App.4th 850, 868 [cruel and

unusual punishment challenge to negotiated maximum sentence requires certificate of probable cause]; accord, *People v. Young* (2000) 77 Cal.App.4th 827, 834.)

The appeal is dismissed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

PERLUSS, J.

We concur:

LILLIE, P. J.

WOODS, J.